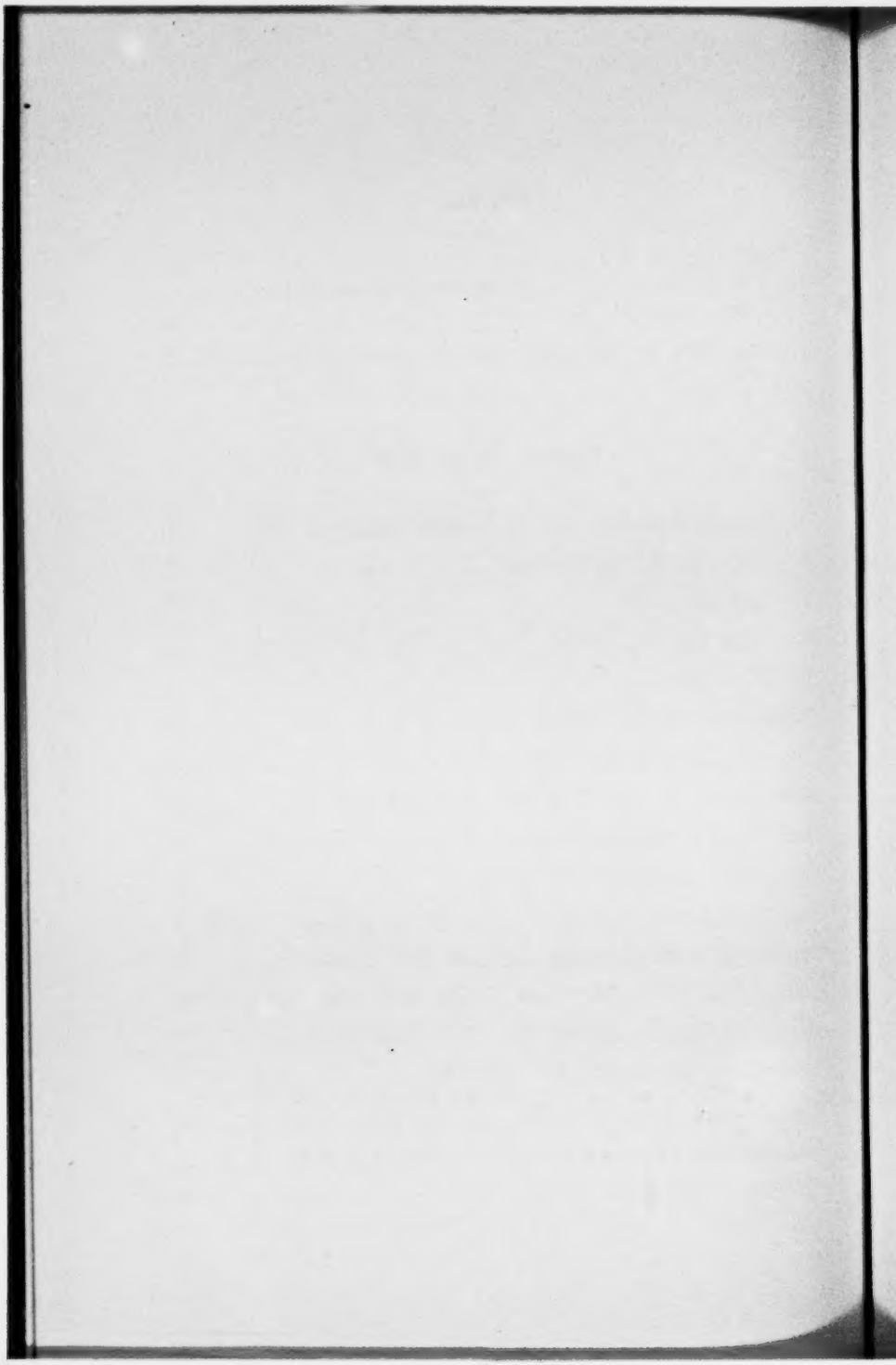

IN THE

Supreme Court of the United States

No.

JOE A. MAY AND LEE MAY,
Petitioners,

versus

JOHN M. PARKER COMPANY, INC.,
Respondent.

OPPOSING BRIEF FOR RESPONDENT

May It Please the Court:

We submit that this case does not present for consideration the alleged points mentioned at page 9, paragraph 1, of the petition:

First: Because the record shows that the Commodity Credit Corporation made no objection to the sale of the equities, and was at all times ready and willing to recognize such sales, and recognized forms other than form "R" up to the 31st day of July, 1940, the sale involved in this case having been made on January 2, 1940. (See pages 4 and 5 of Petition).

Secondly: The Commodity Credit Corporation has never been a party to this suit and is not concerned, the issue being whether petitioners are liable in damages for selling respondent's cotton to a third party and thus breaching the agreement and converting the proceeds to

their own use. The only Supreme Court issue that could possibly arise within the scope of this case would be whether the Commodity Credit Corporation could, contrary to the Acts of Congress and contrary to the Constitution, in a matter that did not concern it, by adopting a rule, deprive citizens of their vested rights, and, if so, whether the statement of the Corporation to the newspapers had such effect. The press release (R. 100) did not purport to prohibit any trading in loan cotton by producers, and was, on its face, merely a regulation concerning the internal management of the Commodity Credit Corporation relative to the type of forms it would honor.

Thirdly: If a case involving the violation of the rules of the Commodity Credit Corporation, made prior to the vesting of title, should ever arise, the issue now coined by petitioners will be presented.

The petition, argument and record clearly show that the entire petition hinges upon the two points mentioned at page 9, paragraph 1 of the petition and hence, if these two points fail, the others, under the rules of this Court, also fail. (See opinion of Circuit Court of Appeals, the facts recited being clearly borne out by the record.)

As above pointed out, the record shows that the Commodity Credit Corporation merely adopted a rule for its own convenience, but assuming that the C. C. C. attempted to pass a rule which would assist sellers of cotton in violating their contracts and unconscionably selling their cotton twice, then such attempt, insofar as this case is concerned, would be governed by the following authorities:

The contract of transfer would have been good even if the assignment had been void.

People vs. Hanley Milling Co., 41 Fed. Supp. 844.

A law should not be construed so as to be retroactive.

Auffmordt vs. Rasin, 102 U. S. 620-3, 26 L. Ed. 262-3.
Heong vs. U. S., 112 U. S. 536, 28 L. Ed. 770.

The validity of an agreement depends upon the state of the law when it was made.

17 C. J. S. title "Contracts", Sec. 22.

A contract, valid when made, is not affected by a later change in public policy.

17 C. J. S. title "Contracts", Sec. 24.

When an obligation is possible of performance, it must be performed.

17 C. J. S., Sec. 459;
Mulvaney vs. King Paint Mfg. Co., 256 Fed. 612;
Dermott vs. Jones, 2 Wall. 1;
Day vs. U. S., 245 U. S. 159, 62 L. Ed. 219;
Jacksonville vs. Hooper, 160 U. S. 514, 527, 40 L. Ed. 515, 9 Cyc. 625.

This is the law in Mississippi:

Tallahatchie Lbr. Co. vs. Cecil Lbr. Co., 124 Miss. 897, 87 So. 449;
Piaggio vs. Somerville, 119 Miss. 6;
Jamison vs. McDaniel, 25 Miss. 83.

A subsequently arising impossibility, not provided for in the agreement, does not excuse failure to perform.

Boyden vs. U. S., 13 Wall. 17;
Jacksonville vs. Hooper, 160 U. S. 514, 40 L. Ed. 515.

An express contract to do an act which is possible in the nature of things and not contrary to law, will not be discharged by subsequent events or rules of law which do not render the performance physically impossible.

London & Lancashire Ind. Co. vs. Board of Commrs., 140 N. E. 672.

A party to a contract is under an implied obligation to cooperate in its performance, and cannot take advantage of an obstacle to performance which it has created or **which lies within its power to remove.**

Murphy vs. North American Co., 24 Fed. Supp. 471, 478.
Williston on Contracts (Rev. ed.) 887-A: Restatement of Contracts, Sec. 395.

It is respectfully submitted that the issuance of certiorari should be denied.

Respectfully submitted,

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